

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

The preliminary hearing findings and Order of the Administrative Law Judge should be affirmed.

(1) The Appeals Board has jurisdiction to review this proceeding under K.S.A. 44-534a.

(2) Claimant began to experience problems with his low back in March or April 1994 while working for the respondent. After hooking up a stove while working for the respondent in the Spring of 1994, claimant sought treatment from his personal physician who released him to return to work with a fifteen (15) pound weight restriction. After June 1994, claimant occasionally experienced flare-ups of low back pain, but was able to continue working. In late March 1995, claimant experienced a severe increase of low back pain and other symptomatology after moving and handling merchandise at work while preparing for a store audit. Based upon this evidence, the Appeals Board finds claimant aggravated a preexisting low back condition and, therefore, sustained personal injury by accident arising out of and in the course of his employment with the respondent in late March 1995.

Within ten (10) days of the March 1995 injury, claimant reported to his immediate supervisor that he needed to see a doctor for his low back pain. Claimant was not aware he had sustained a new work-related back injury and felt his back problem was similar to that he had experienced in 1994. Claimant did not report that he had sustained a new work-related accident. Claimant's supervisor was aware of claimant's ongoing back problems and the work activities he had been performing. Under this set of facts, the Appeals Board finds claimant provided timely notice of the March 1995 injury or aggravation as required by K.S.A. 44-520.

Because of the above finding that claimant sustained personal injury by accident in March 1995, the issue of timely written claim for an accidental injury occurring in May 1994 is rendered moot at this juncture of the proceeding.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl entered in this proceeding on June 1, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1995.

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BOARD MEMBER

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**BOARD MEMBER**

- c: Norman I. Cooley, Wichita, Kansas  
William L. Townsley, III, Wichita, Kansas  
Shannon S. Krysl, Administrative Law Judge  
David A. Shufelt, Acting Director